

### **CR1450 Practitioner's Note: Explanation Concerning Imperfect Self-Defense**

Imperfect self-defense is an affirmative defense that can reduce aggravated murder to murder, attempted aggravated murder to attempted murder, murder to manslaughter, and attempted murder to attempted manslaughter. See Utah Code Ann. § 76-5-202(4) (aggravated murder); Utah Code Ann. § 76-5-203(4) (murder).

When the defense is asserted, the State must disprove the defense beyond a reasonable doubt before the defendant can be convicted of the greater crime. If the State cannot disprove the defense beyond a reasonable doubt, the defendant can be convicted only of the lesser crime.

Instructing the jury on imperfect self-defense has proved to be problematic because many practitioners have tried to include the defense as an element of either or both of the greater crime and the reduced crime. The inevitable result is that the elements instruction on the reduced crime misstates the burden of proof on the defense as it applies to that reduced crime. See, e.g., *State v. Lee*, 2014 UT App 4, 318 P.3d 1164.

To avoid these problems, these instructions direct the jury to decide the defense exclusively through a special verdict form. Under this approach, the jury is given a standard elements instruction on the greater offense, with no element addressing imperfect self-defense. If the jury finds that the State has proved the elements of the greater offense beyond a reasonable doubt, the jury enters a guilty verdict on that offense. The jury is directed to the imperfect self-defense instructions and instructed that it must complete the imperfect self-defense special verdict form. On the special verdict form, the jury must indicate whether it has unanimously found that the State disproved the defense beyond a reasonable doubt. If the jury indicates the State has disproved the defense, the trial court enters a conviction for the greater crime. If the jury indicates the State has not disproved the defense, the trial court enters a conviction for the lesser crime.

The committee considered *State v. Drej*, 2010 UT 35, 233 P.3d 476, and concluded that it does not preclude this approach.